Ketua Pengarah Hasil Dalam Negeri v Tan Sri Kishu T Jethanand

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R2-14-12 OF 1997
AZMEL J
13 FEBRUARY 1998

Revenue Law *— Income tax — Assessment — Income of testator's estate — Estate has yet to be wound up — Whether income of estate of a testator should be treated as the income of the executor or the income of the beneficiary — Whether court could infer the existence of any period of limitation of the administration by the executor — Income Tax Act 1967 s 64(1)*

The respondent is the sole executor and sole beneficiary of the estate of the testator. The appellant had assessed the income of the estate of the testator for the relevant years of assessment in the name of the respondent, thereby treating the income as that of the respondent. The assets of the estate have not been transferred into the name of the respondent as sole beneficiary, and this was still the position as of the date of the hearing of the appeal before this court. The Special Commissioners of the Income Tax ruled that in view of the fact that the estate still exists and has not been wound up, the income of the testator's estate shall be treated as the source and income of the executor. The appellant appealed.

The issue was whether in the light of s 64(1) of the Income Tax Act 1967 ('the Act'), the income of the estate of the testator should be treated as the income of the executor or the income of the beneficiary (ie, the respondent). The appellant argued that the period of the administration of the executor was at the time when the executor is able to define the residue of the estate for distribution to the beneficiaries, and therefore, when the residue of the estate has been determined, the beneficiaries have a right to the assets of the estate.

Held, dismissing the appeal with costs:

(1) Section 64(1) of the Act clearly states that the income of the estate of a deceased individual is to be taxed as the income of the estate, and not as the income of the beneficiaries of the estate. When s 64(1) is read together with s 64(5) which states that payment made by the executor to a beneficiary is not to be regarded for tax purposes, it would be quite difficult to interpret s 64(1) to mean anything else. To put it simply, it would be contrary to the rules of construction to interpret s 64(1) to mean that the income of the estate is the income of the beneficiaries (see p 784H–I).

(2) Applying the principle of construing a taxing Act, in the absence of any mention of the term 'administration period', it would be

improper to infer the existence of any period of limitation of the administration by the executor, so long as the assets still remained in the estate of the testator (see p 786D–E); *The Commissioner of Inland Revenue v Sir Aubrey Smith* 15 TC 662; [1930] 1 KB 713 not followed.

[Bahasa Malaysia summary

Penentang adalah wasi tunggal dan benefisiari tungal harta pusaka pewasiat. Perayu telah menaksir pendapatan harta pusaka pewasiat untuk tahun penaksiran yang relevan dalam nama penentang, lalu menganggap pendapatan sebagai pendapatan penentang. Aset harta pusaka tidak dipindah kepada nama penentang sebagai benefisiari tunggal, dan ini masih merupakan kedudukannya pada tarikh pembicaraan rayuan di hadapan mahkamah ini. Pesuruhjaya Khas Cukai Pendapatan memutuskan bahawa memandangkan hakikat bahawa harta pusaka itu masih wujud dan belum digulung, pendapatan harta pusaka hendaklah dianggap sebagai punca dan pendapatan wasi. Perayu membuat rayuan.

Isu adalah sama ada memandangkan s 64(1) Akta Cukai Pendapatan 1967 ('Akta tersebut'), pendapatan harta pusaka pewasiat haruslah dianggap sebagai pendapatan wasi atau pendapatan benefisiari (iaitu penentang). Perayu berhujah bahawa tempoh pentadbiran wasi adalah pada masa apabila wasi boleh menentukan baki harta pusaka untuk pengagihan kepada benefisiari, dan maka, apabila baki harta pusaka telah ditentukan, benefisiari berhak mendapat aset harta pusaka.

Diputuskan, menolak rayuan dengan kos:

(1) Seksyen 64(1) Akta tersebut jelas menyatakan bahawa pendapatan harta pusaka individu yang telah meninggal hendaklah dikenakan cukai sebagai pendapatan harta pusaka, dan bukannya sebagai pendapatan benefisiari harta pusaka. Apabila s 64(1) dibaca bersama dengan s 64(5) yang menyatakan bahawa bayaran yang dibuat oleh wasi kepada seorang benefisiari tidak haruslah diambil kira untuk tujuan cukai, adalah amat sukar untuk mentafsir s 64(1) sebagai bermakna lain daripada itu. Pendek kata, adalah bertentangan dengan rukun tafsiran untuk mentafsir s 64(1) sebagai bermakna pendapatan harta pusaka adalah pendapatan benefisiari (lihat ms 784H–I).

(2) Dengan memakai prinsip mentafsir Akta pencukaian, dalam ketiadaan sebarang sebutan tentang istilah 'tempoh pentadbiran', adalah tidak wajar untuk membuat inferens tentang kewujudan apa-apa tempoh had masa pentadbiran oleh wasi, asalkan aset kekal dalam harta pusaka pewasiat (lihat ms 786D–E); *The Commissioner of Inland Revenue v Sir Aubrey Smith* 15 TC 662; [1930] 1 KB 713 tidak diikut.]

Notes

For cases on income tax, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1674–1917.

Cases referred to

Commissioner of Inland Revenue, The v Sir Aubrey Smith 15 TC 662; [1930] 1 KB 713 (not folld)

Micklewait, Re (1855) 11 LJ Ex 452 (refd)

National Land Finance Co-operative v Director General of Inland Revenue [1994] 1 MLJ 99 (refd)

Legislation referred to

Income Tax Act 1967 s 64(1)

Abu Tariq bin Jamaluddin (Federal Counsel) for the applicant.

N Nadkarni (*Lee Hishammuddin*) for the respondent.

Azmel J: The appellant in this case filed this appeal by way of a case stated against the deciding order of the Special Commissioners of the Income Tax dated 1 April 1997.

The facts of the case are as follows. The respondent is the only son of Tirthdas Jethanand Lakhiani ('the testator') who died on 1 May 1972 having made and executed his last will dated 1 July 1968. Probate of the will was granted on 2 May 1973. Estate duty was assessed on 14 August 1974 and paid in that month. In July 1975, the testator's contribution to the Employees Provident Fund was paid. In August 1975, the National Westminster Bank Ltd of London accepted the grant of probate as sufficient to enable the testator's name to be deleted from the fixed deposit account in the joint names of the testator and the respondent. On 23 March 1983, the Sindhu Settlement Corp Ltd agreed to transfer two shares of Rupees 1,000 each to the respondent.

The respondent is the sole executor and sole beneficiary of the estate of the testator. Initially, the appellant assessed the income of the estate of the testator for the relevant years of assessment as income of the executor of the testator's estate under s 64(1) of the Income Tax Act 1967. Subsequently, these assessments were vacated and the income of the testator's estate was assessed in the name of the respondent, thereby treating the income as that of the respondent. The assets of the estate have not been transferred into the name of the respondent as sole beneficiary, and this was still the position as of the date of the hearing of the appeal before this court.

The issue that required to be determined by the Special Commissioners was whether in the light of s 64(1) of the said Act, the income of the estate of the testator should be treated as the income of the executor or the income of the beneficiary (the respondent). At the end of the hearing, the Special Commissioners ruled that in view of the fact that the estate still exists and has not been wound up, the income of the testator's estate shall be treated as the

source and income of the executor. It was against this ruling by the Special Commissioners that this appeal was lodged by the applicant. A

As the issue in this appeal revolves around the interpretation of s 64(1) of the Act, I think it is appropriate to state the whole of s 64 which reads as follows:

(1) For the purposes of this Act, any source forming part of the estate of a deceased individual and any income from that source arising after the day of the death of that individual shall be treated as the source and income of the executor of that individual. B

(2) The chargeable income of the executor of the estate of a deceased individual for a year of assessment shall be ascertained by reference to the gross income from those sources for the appropriate basis period determined in accordance with the provisions of sections 3 and 4. C

(3) When an annuity is payable for the basis year for a year of assessment by an executor of a deceased individual, then —

(a) in ascertaining the total income of the executor for that year of assessment the amount of the annuity so payable shall be deducted after any deduction falling to be made under section 44(1)(a) or (b) and before any deduction falling to be made under section 44(1)(c); D

(b) the annuity so payable shall be regarded as income within the meaning of section 4(e) in the hands of the annuitant; and

(c) the annuity shall be deemed to be derived from Malaysia. E

(4) In the case of an estate of an individual who was domiciled in Malaysia at the time of his death, the deduction allowed for any year of assessment by section 46 (but no other deduction under Chapter 7) shall be made from the total income of the executor for that year whether or not the executor is an individual and whether or not the executor is resident for the basis year for that year. F

(5) Subject to subsection (3), payments made by the executor of a deceased individual to a beneficiary of the estate of that individual and received by him as a beneficiary shall not be regarded in his hands as income for the purposes of this Act.

(6) For the purposes of subsection (3), section 63(2) shall apply to annuities by this section as it applies to annuities affected by the said section 63. G

Reading the provision of s 64(1) of the Act, I find the provision clearly states that the income of the estate of a deceased individual is to be taxed as the income of the estate, and not as the income of the beneficiaries of the estate. And when this s 64(1) is read together with s 64(5) which states H that payment made by the executor to a beneficiary is not to be regarded for tax purposes, it would be quite difficult to interpret s 64(1) to mean anything else. To put it simply, it would be contrary to the rules of construction to interpret s 64(1) to mean that the income of the estate is the income of the beneficiaries. As to the principle to be used in construing a taxing Act, I need only to refer to the Supreme Court case of *National Land Finance Co-operative v Director General of Inland Revenue* [1994] 1 MLJ 99 where Gunn Chit Tuan CJ (Malaya) said (at p 106C–E): I

There are ample authorities to show that the courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In *Re Micklewait* (1855) 11 LJ Ex 452, it was held that a subject was not to be taxed without clear words. We realize that revenue from taxation is essential to enable government to administer the country and that the courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless we should remind ourselves of the principle of strict interpretation as stated in Rowlatt J in *Cape Brandy Syndicate v Inland Revenue Commissioners* 12 TC 358:

> ... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used ... .

It was argued by the appellant that this was a special situation where the respondent was an executor as well as the beneficiary at the same time. In such capacity, he has enjoyed the benefits of the income of the estate. The appellant also argued that the period of the administration of the executor was at the time when the executor is able to define the residue of the estate for distribution to the beneficiaries. And when the residue of the estate has been determined, the beneficiaries have a right to the assets of the estate. In support of this contention, counsel for the appellant referred to the book *Malaysian Taxation* by Chin Yoong Kheong who states in the said book (at p 497):

> The provisions in the Act which govern taxation of income arising from the estate of a deceased person apply only during the administration period. This period starts on the date of death and ends on the date when the executor is in a position to define the residue of the estate for distribution to the beneficiaries. Where there is a will and the will provides for a trust, the administration of the estate is regarded as completed when the executor is in a position to transfer the trust to the trustees.
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> It is to be noted that a beneficiary does not have a definite interest in the estate, which will ultimately fall to him until the residue of the estate has been defined so that the aliquot portion passing to him can be defined (for authority, see *The Commissioner of Inland Revenue v Sir Aubrey Smith* 15 TC 662; [1930] 1 KB 713. Since the residue of an estate cannot be defined until the administration is completed, any income accruing to the estate during the administration period is strictly assessable in the name of the executor. The income comprising the residue at the completion of the administration will be distributed to the beneficiaries as capital.

Counsel for the applicant also referred to the English case of *The The Commissioner of Inland Revenue v Sir Aubrey Smith* 15 TC 662; [1930] 1 KB 713 where Lord Hanworth MR said:

> In *Barnado*'s case in the Court of Appeal (7 TC at p 664), Lord Justice Younger as he then was, put the matter plainly; 'and what one, I think, has always understood to be the principle applicable to administration actions and actions of trustees with reference to residue, and that is this, that until the residue is ascertained, and until its existence as not residue has been acknowledged by the trustee, either by payment to the residuary legatee, or,

> if the residue be settled, by the appropriation of a fund to meet the settled residue, the residuary legatee has no interest in any part which subsequently becomes residue as a specific fund, but that his right is until that moment of time arrives, to have the estate administered in due course.
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> I read all those passages because they appear quite clearly to lay down that until the fact is ascertained, or can or ought to be inferred, that the residue has become defined so that the aliquot portion passing to the beneficiary can also be defined, the beneficiary has not, until that time, a definite interest in the sum which will ultimately fall to him. Whatever be the contentions of the respondent, it appear to me as Lord Holdane said in the case I first cited that it is largely a question of fact.

I must admit that the decision of the above English case is very convincing and persuasive. But that is the position under the English common law. In Malaysia, we are governed by the provision of s 64 of the said Act. In my view, the provisions of s 64(1) read together with s 64(5), as I have stated earlier, are very clear and are not capable of having any other meaning. Whatever may be the arguments of counsel for the applicant, the facts of this case are governed by the provisions of s 64 of the Act. I am unable to find nor am I shown that there are other provisions in the said Act that gives any provisos to the application of s 64(1) of the said Act. And applying the principle of construing a taxing Act, in the absence of any mention of the term 'administration period', it would be improper for me to infer the existence of any period of limitation of the administration by the executor, so long as the assets still remain in the estate of the testator. I am unable to be persuaded by the submission of counsel for the applicant on this issue.

In the circumstances, the appeal was dismissed with costs.

Appeal dismissed with costs.

Reported by Loo Lai Mee